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**TRANSMITTAL  
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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/072,435	
	Filing Date	February 8, 2002	
	First Named Inventor	Shermer et al	
	Art Unit	1745	
	Examiner Name	Jane J. Rhee	
Total Number of Pages in This Submission		Attorney Docket Number	0275S-000563

**ENCLOSURES (check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Reply  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC)  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):  <b>return receipt postcard</b>
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Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	Brent G. Seitz	Reg. No.	54,435
Signature					
Date	August 11, 2006				

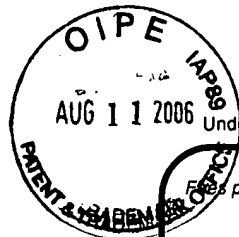
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Signature		Date	August 11, 2006

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## FEE TRANSMITTAL for FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500

### Complete if Known

Application Number	10/072,435
Filing Date	February 8, 2002
First Named Inventor	Shermer et al
Examiner Name	Jane J. Rhee
Art Unit	1745
Attorney Docket No.	0275S-000563

### METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 02-2548 Deposit Account Name: Black & Decker (U.S.) Inc.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments

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### FEE CALCULATION

#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

#### 2. EXCESS CLAIM FEES

##### Fee Description

Each claim over 20 (including Reissues)

Fee (\$)  
50

Small Entity Fee (\$)  
25

Each independent claim over 3 (including Reissues)

200

100

Multiple dependent claims

360

180

Total Claims

Extra Claims

Fee(\$)

Fee Paid (\$)

Multiple Dependent Claims

\_\_\_\_\_ - 20 or HP= 0 x \_\_\_\_\_ = 0

Fee (\$)

Fee Paid (\$)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims

Extra Claims

Fee(\$)

Fee Paid (\$)

\_\_\_\_\_ - 3 or HP= 0 x \_\_\_\_\_ = 0

HP = highest number of independent claims paid for, if greater than 3.

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	= 0	/ 50 = 0 (round up to a whole number) x		= 0

#### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge) : Appellant's Brief

Fees Paid (\$)

500

### SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	54,435	Telephone	248-641-1600
Name (Print/Type)	Brent G. Seitz	Date	August 11, 2006		

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EV 855 009 686 US



**PATENT**

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**Appeal No. \_\_\_\_\_**

Application No.: 10/072,435  
Filing Date: February 8, 2002  
Applicants: Shermer et al.  
Group Art Unit: 1745  
Examiner: Jane J. Rhee  
Title: UNIVERSAL ABRASIVE SHEET  
Attorney Docket: 0275S-000563

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**APPELLANTS' BRIEF**

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## **BRIEF ON BEHALF OF APPELLANTS**

This is an appeal from the action of the Examiner dated March 15, 2006, finally rejecting Claims 1-11 and 13-23. Copies of the appealed claims are attached as an appendix.

### **I. REAL PARTY IN INTEREST**

The real party in interest in the present application is Black & Decker Inc. (Assignee).

### **II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **III. STATUS OF THE CLAIMS**

Claims 1-11 and 13-23 are currently pending in the application. All of the pending claims stand finally rejected.

### **IV. STATUS OF AMENDMENTS**

All of the amendments have been entered in this application.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

A concise explanation of the subject matter defined in each independent claim and each dependent claim argued separately is provided below. The explanation refers to the

specification as filed by page, paragraph, and paragraph line number and to the drawings by reference numbers. The citations to the application are for exemplary purposes only as the invention includes numerous embodiments.

### **Claim 1**

Independent Claim 1 recites a universal abrasive sheet [Figs. 1 – 6 at ref. no. 10] for use with alternative sanding or polishing machines having platens with different configurations [page 1 at ¶ [0001], lines 3-4]; page 5 at ¶ [0019], lines 3-4].

The universal abrasive sheet comprises a sheet material having an abrasive material [Figs. 5-6 at ref. no. 52; page 8 at ¶ [0024], lines 1-3] disposed on a face and having a body portion [Figs. 2-4 at ref. nos. 20, 32, and 42] and a tip portion [Figs. 2-4 at ref. nos. 22, 34, and 44; page 6 at ¶ [0021], lines 3-5; page 7 at ¶ [0022], lines 4-6; page 7 at ¶ [0023], lines 4-6].

The tip portion [22, 34, 44] is separable from the body [20, 32, 42] portion and defines a separate region of the sheet material relative to the body portion [page 6, at ¶ [0021], lines 3-5 and 7-9; page 7 at ¶ [0022], lines 6-9; page 7 at ¶ [0023], lines 6-9].

The body portion [20, 32, 42] is provided with a first configuration adapted to be used with a first platen configuration and having first segments defining regions of weakened material [Fig. 1 at ref. nos. 30 and 40; pages 6-7 at ¶ [0022] lines 2-4; page 7 at ¶ [0023] lines 1-4; pages 5-6 at ¶ [0019], lines 4-11].

The sheet material is adapted to be separated along the first segments [30, 40] to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimensions than the first

configuration [Fig. 1 at ref. nos. 30 and 40; pages 6-7 at ¶ [0022] lines 2-4; page 7 at ¶ [0023] lines 1-4; pages 5-6 at ¶ [0019], lines 4-11].

### **Claim 3**

Claim 3 is dependent upon Claim 1. Claim 3 recites, wherein the body portion and the tip portion have varying configurations defined by second and third segments defining regions of weakened material [Figs. 3-4, ref. nos. 24, 36, 46; page 6 at ¶ [0021], lines 3-5; page 7 at [0022], lines 4-6; page 7 at [0023], lines 4-6].

The sheet material is adapted to be separated along the second segments to separate a first tip portion having a first tip configuration [Figs. 2-4, ref. nos. 22, 34, 44] from a first body portion having a first body configuration [Figs. 2-4, ref. nos. 20, 32, 42] [page 6 at ¶ [0021], lines 3-5; page 7, ¶ [0022], lines 4-6; page 7 at ¶ [0023], lines 4-6].

The sheet material is adapted to be selectively separated along the third segments to separate a second tip portion having a second tip configuration [Figs. 2-4, ref. nos. 22, 34, 44] different from the first tip configuration from a second body portion having a second body configuration different from the first body configuration [Figs. 2-4, ref. nos. 22, 34, 44] [page 6 at ¶ [0021], lines 3-5; page 7, ¶ [0022], lines 4-6; page 7 at ¶ [0023], lines 4-6].

### **Claim 4**

Claim 4 is dependent upon Claim 3. Claim 4 recites, wherein the first and second tip configurations have different sizes [Figs. 2-4, ref. nos. 22, 34, 44].



### **Claim 5**

Claim 5 is dependent upon Claim 3. Claim 5 recites, the first and second tip configurations have different shapes [Figs. 2-4, ref. nos. 22, 34, 44].

### **Claim 6**

Claim 6 is dependent upon Claim 1. Claim 6 recites, the body portion and the tip portion are separated by a second segment defining regions of weakened material [Figs. 3-4, ref. nos. 24, 36, 46; page 6 at ¶ [0021], lines 3-5; page 7 at [0022], lines 4-6; page 7 at [0023], lines 4-6].

The sheet material further includes at least one replacement tip portion extending from one of the body portion and the tip portion [Figs. 14A, 14B; page 6 at ¶ [0020], lines 1-3].

The replacement tip is defined by a third segment defining regions of weakened material [Fig. 1, ref. nos. 16A, 16B, 26] and adapted to be separated along the third segment for removing the replacement tip portion from one of the body portion and the tip portion [page 6 at ¶ [0021], lines 11-14; page 7 at ¶ [0023], lines 10-12].

### **Claim 16**

Claim 16 is dependent upon Claim 1. Claim 16 recites, wherein said regions of weakened material include perforations [page 8 at ¶ [0025]].

### **Claim 17**

Independent Claim 17 recites a universal abrasive sheet [Figs. 1 – 6 at ref. no. 10]

for use with alternative sanding or polishing machines having platens with different configurations [page 1 at ¶ [0001], lines 3-4]; page 5 at ¶ [0019], lines 3-4].

The universal abrasive sheet comprises a sheet material having an abrasive material [Figs. 5-6 at ref. no. 52; page 8 at ¶ [0024], lines 1-3] disposed on a face and having a body portion [Figs. 2-4 at ref. nos. 20, 32, and 42] and a tip portion [Figs. 2-4 at ref. nos. 22, 34, and 44; page 6 at ¶ [0021], lines 3-5; page 7 at ¶ [0022], lines 4-6; page 7 at ¶ [0023], lines 4-6].

The tip portion is separable from the body portion and defines a separate region of the sheet material relative to the body portion [page 6, at ¶ [0021], lines 3-5 and 7-9; page 7 at ¶ [0022], lines 6-9; page 7 at ¶ [0023], lines 6-9].

The body portion is provided with a first configuration adapted to be used with a first platen configuration having first marking segments [Fig. 1 at ref. nos. 30 and 40; pages 6-7 at ¶ [0022] lines 2-4; page 7 at ¶ [0023] lines 1-4; pages 5-6 at ¶ [0019], lines 4-11; page 8 at ¶ [0025].

The sheet material is adapted to be separated along the first marking segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimensions than the first configuration [Fig. 1 at ref. nos. 30 and 40; pages 6-7 at ¶ [0022] lines 2-4; page 7 at ¶ [0023] lines 1-4; pages 5-6 at ¶ [0019], lines 4-11].

#### **Claim 19**

Claim 19 is dependent upon Claim 17. Claim 19 recites, wherein the body portion and the tip portion have varying configurations defined by second and third marking

segments [Figs. 3-4, ref. nos. 24, 36, 46; page 6 at ¶ [0021], lines 3-5; page 7 at [0022] lines 4-6; page 7 at [0023], lines 4-6]; page 8 at ¶ [0025]].

The sheet material is adapted to be separated along the second marking segments to separate a first tip portion having a first tip configuration [Figs. 2-4, ref. nos. 22, 34, 44] from a first body portion having a first body configuration [Figs. 2-4, ref. nos. 20, 32, 42] [page 6 at ¶ [0021], lines 3-5; page 7, ¶ [0022] lines 4-6; page 7 at ¶ [0023], lines 4-6].

The sheet material is adapted to be selectively separated along the third marking segments to separate a second tip portion having a second tip configuration [Figs. 2-4, ref. nos. 22, 34, 44] different from the first tip configuration from a second body portion having a second body configuration different from the first body configuration [Figs. 2-4, ref. nos. 22, 34, 44] [page 6 at ¶ [0021], lines 3-5; page 7, ¶ [0022] lines 4-6; page 7 at ¶ [0023], lines 4-6].

### **Claim 21**

Independent Claim 21 recites a universal abrasive sheet [Figs. 1 – 6 at ref. no. 10] for use with alternative sanding or polishing machines having platens with different configurations [page 1 at ¶ [0001], lines 3-4]; page 5 at ¶ [0019], lines 3-4].

The universal abrasive sheet comprises a sheet material having an abrasive material [Figs. 5-6 at ref. no. 52; page 8 at ¶ [0024], lines 1-3] disposed on a face and having a body portion [Figs. 2-4 at ref. nos. 20, 32, and 42] and a tip portion [Figs. 2-4 at ref. nos. 22, 34, and 44; page 6 at ¶ [0021], lines 3-5; page 7 at ¶ [0022], lines 4-6; page 7 at ¶ [0023], lines 4-6].

The tip portion is separable from the body portion and defines a separate region of the sheet material relative to the body portion [page 6, at ¶ [0021], lines 3-5 and 7-9; page 7 at ¶ [0022], lines 6-9; page 7 at ¶ [0023], lines 6-9].

The body portion is provided with a first configuration adapted to be used with a first platen configuration and having first segments defining regions of weakened material [Fig. 1 at ref. nos. 30 and 40; pages 6-7 at ¶ [0022], lines 2-4; page 7 at ¶ [0023], lines 1-4; pages 5-6 at ¶ [0019], lines 4-11].

The sheet material is adapted to be separated along the first segments to change a configuration of the body portion of the sheet material to correspond with a second differently configured platen [Fig. 1 at ref. nos. 30 and 40; pages 6-7 at ¶ [0022], lines 2-4; page 7 at ¶ [0023], lines 1-4; pages 5-6 at ¶ [0019], lines 4-11].

The body portion and the tip portion have varying configurations defined by second and third segments defining regions of weakened material [Figs. 3-4, ref. nos. 24, 36, 46; page 6 at ¶ [0021], lines 3-5; page 7 at [0022], lines 4-6; page 7 at [0023], lines 4-6].

The sheet material is adapted to be separated along the second segments to separate a first tip portion having a first tip configuration [Figs. 2-4, ref. nos. 22, 34, 44] from a first body portion having a first body configuration [Figs. 2-4, ref. nos. 20, 32, 42] [page 6 at ¶ [0021], lines 3-5; page 7, ¶ [0022], lines 4-6; page 7 at ¶ [0023], lines 4-6].

The sheet material is adapted to be selectively separated along the third segments to separate a second tip portion having a second tip configuration [Figs. 2-4, ref. nos. 22, 34, 44] different from the first tip configuration from a second body portion having a second body configuration different from the first body configuration [Figs. 2-4, ref. nos. 22, 34, 44] [page 6 at ¶ [0021], lines 3-5; page 7, ¶ [0022], lines 4-6; page 7 at ¶ [0023],

lines 4-6].

### **Claim 22**

Claim 22 is dependent upon Claim 21. Claim 22 recites, wherein the first and second tip configurations have different sizes [Figs. 2-4, ref. nos. 22, 34, 44].

### **Claim 23**

Claim 23 is dependent upon Claim 21. Claim 23 recites, the first and second tip configurations have different shapes [Figs. 2-4, ref. nos. 22, 34, 44].

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether the combination of Martin et al. (U.S. Pat. No. 6,045,887) and Simons (U.S. Pat. No. 1,635,350) renders Claims 1, 7-11, 13-17, and 20 obvious under 35 U.S.C. § 103(a).
2. Whether the combination of the Martin et al. reference, the Simons reference, and Pearce (U.S. Pat. No. 5,367,839) renders Claims 2-6, 18-19, and 21-23 obvious under 35 U.S.C. § 103(a).

## VII. ARGUMENTS

1. COMBINATION OF THE MARTIN ET AL. AND SIMONS REFERENCES FAILS TO RENDER THE INVENTIONS OF CLAIMS 1, 7-11, 13-17, AND 20 OBVIOUS UNDER 35 U.S.C. § 103(a).

Claims 1, 7-11, 13-17, and 20 stand rejected under 35 U.S.C. § 103(a) in light of the combination of the Martin et al. and the Simons references. Applicants respectfully submit that the combination of the Martin et al. and Simons references fails to render obvious Claims 1, 7-11, 13-17, and 20.

Independent Claims 1 and 17 recite, in part and with reference to the figures for exemplary purposes only, “a universal abrasive sheet [10] for use with...platens with different configurations.” The sheet has a tip portion 22, 34, and 44 and a body portion 20, 32, and 42. “The tip portion is separable from the body portion and defines a separate region of the sheet material relative to the body portion.”

“The body portion is provided with a first configuration adapted to be used with a first platen configuration.” The body portion includes “first segments” (Claim 1, ref. nos. 30/40) or “first marking segments” (Claim 17, ref. nos. 30/40). As recited in Claim 1, the first segments “[define] regions of weakened material.”

“The sheet material is adapted to be separated along the first [marking (Claim 17)] segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimensions than the first configuration” (emphasis added).

For example, if the sheet 10 is to be used with a large platen then the segments 30 and 40 are not removed to provided the large sheet 10A of Figure 2. The large sheet 10A has a large body 20 that approximates the size of the body of a large platen. If the sheet

10 is to be used with a medium sized platen then outer segment 30 is removed to provide the intermediate sheet 10B of Figure 3. The intermediate sheet 10B has a medium sized body 32 that approximates the size of the body of a medium platen. If the sheet 10 is to be used with a small platen then both the outer and the inner segments 30 and 40 are removed to provide the small sheet 10C of Figure 4. The small sheet 10C has a small body 42 that approximates the size of the body of a small platen.

Therefore, the disclosed abrasive sheet provides for a single abrasive sheet 10 that can be configured to have a body 20, 32, or 42 of multiple different sizes. Each one of the different sized bodies has different external dimensions that approximate the body sizes of the most common platens. The body sizes are selected to correspond to the size of the platen being used.

The Martin et al. reference appears to disclose, with reference to Figures 1 and 2, an abrasive sheet. The sheet 1 has a main body 3 and a tip portion 5 separated by a perforation 7. The tip 5 includes a number of working points 11. The tip can be separated from the main body along the perforation, rotated, and repositioned at the body to change the positions of the working points 11. The body 3 includes a plurality of apertures 9 that permit removal of dust and debris through the sheet 1 during operation.

The Martin et al. reference fails to disclose the body 3 of the sheet 1 having segments "defin[ing] regions of weakened material" or "marking segments," whereby separation of the body along those segments changes "a configuration of said body portion," and thus the external dimensions of the body "to correspond with a second platen configuration having different external dimensions than said first configuration," as set forth in Claims 1 and 17. The body of sheet 1 of the Martin et al. reference retains the

same configuration and the same external dimensions at all times. The Martin et al. reference fails to disclose that the configuration or dimensions of the body can be modified to “correspond with” platens of different sizes, as set forth in Claims 1 and 17.

The Simons reference appears to disclose, with reference to Figures 1-3, a piece of sand paper 1 having divisional scores or lines 4. The lines 4 divide the sand paper 1 into four equally sized squares. The lines 4 are provided to allow the sand paper 1 to be torn along the lines 4 to modify the size of the sand paper 1 to be sufficient for the size of the article being sanded. See Col. 2, lines 48-50. The sand paper 1 can also be folded along the lines 4 into a pad 5 to facilitate transportation of the sand paper 1. See Col. 2, lines 54-66, Fig. 3. The Simons reference fails to disclose or suggest a first configuration of the sand paper 1 for use with a first platen configuration and separating the sand paper along the lines 4 to provide the paper 1 with a second configuration corresponding to a second platen configuration having different external dimensions than the first platen configuration.

In particular, the Simons reference fails to disclose or suggest “wherein said sheet material is adapted to be separated along said first [marking (Claim 17)] segments to change a configuration of said body portion of said sheet material to correspond with a second platen configuration having different external dimensions than said first configuration,” as set forth in Claims 1 and 17.

As set forth above, both the Martin et al. and Simons references fail to disclose or suggest each and every feature of Claims 1 and 17. Therefore, combination of the Martin et al. and the Simons references fails to render each and every feature of Claims 1 and 17 obvious.



The Office Actions acknowledge that Martin et al. fails to disclose or alone suggest an abrasive sheet having a body with a first configuration adapted to be used with a first platen configuration and a second configuration corresponding to a second platen configuration having different external dimensions than the first configuration, as generally set forth in Claims 1 and 17. See September 30, 2005 Office Action at page 5. The Examiner alleges that these features are obvious in light of the combination of Martin et al. and Simons.

The Office Actions assert that:

Simons teaches first segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the first segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimension[s] than the first configuration (figure 1 number 4) for the purpose of providing multiple sizes of sand paper (col. 2 lines 48-60).

\*\*\*

The score lines 4 creat[e] multiple configurations of the sandpaper wherein each configuration creates different external dimensions ....

See March 15, 2006 Office Action at 2-3 and April 18, 2006 Advisory Action.

Applicants respectfully disagree with the Office Actions. The back surface of the sand paper disclosed by Simons is provided with a gritty material arranged in stripes 3 that form surfaces that provide a point of friction contact for the user's fingers, thus reducing finger slippage (column 1, lines 30-43). Simons fails to disclose use of the sand paper with two different platens having different configurations and different external dimensions. In fact, Simons fails to disclose or suggest the use of a platen at all. The Simons reference teaches away from using a platen because it only discloses use of the sandpaper by hand.

This Section 103 rejection is improper because it lacks factual support. *Ex parte David L. Robinson, et al.*, Appeal No. 2005-0111, March 18, 2005. The rejection is further improper because the Examiner is resorting to speculation, unfound assumptions, and hindsight reconstruction to fill deficiencies in the factual basis of the rejection. *In re Warner*, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967). Even if the cited references could be modified as the Examiner asserts, such modifications are not obvious unless the prior art suggested the desirability of the modification. *In re Mills*, 916 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1990). The Office Action fails to provide any evidence or explanation as to why and/or how one of ordinary skill in the art would have been motivated to modify the teachings of the Martin et al. reference in light of the Simons reference to arrive at the claimed invention. The Office Actions have improperly inferred from Simons that the reference teaches abrasive sheets having body portions of different dimensions for use with different platen configurations. Accordingly, the Office Actions are using an incorrect factual basis and impermissible hindsight to combine the Martin et al. and the Simons references.

As set forth above, combination of the Martin et al. and Simons references fails to suggest each and every feature of Claims 1 and 17. Therefore, combination of Martin et al. and Simons fails to render obvious Claims 1 and 17, and those claims dependent therefrom. Applicants respectfully request reconsideration and withdrawal of this Section 103 rejection of Claims 1 and 17, and those claims dependent therefrom.

2. COMBINATION OF THE MARTIN ET AL., SIMONS, AND PEARCE REFERENCES FAILS TO RENDER CLAIMS 3, 19, AND 21-23 OBVIOUS UNDER 35 U.S.C. § 103(a).

Claims 3, 19, and 21-23 stand rejected under 35 U.S.C. § 103(a) in light of the combination of the Martin et al., Simons, and Pearce (U.S. Patent No. 5,367,839) references. Applicants respectfully submit that the combination of the Martin et al., Simons, and Pearce references fails to render obvious Claims 21-23.

Independent Claim 21 recites, in part and with reference to the figures for exemplary purposes only, “a universal abrasive sheet [10] for use with...platens with different configurations.” The sheet has a tip portion 22, 34, 44 and a body portion 20, 32, 42. The tip portion is separable from the body portion and defines “a separate region of said sheet material relative to said body portion.”

The body portion has a “first configuration adapted to be used with a first platen configuration.” The body portion also has “first segments [30 and 40] defining regions of weakened material.” The sheet material is adapted to be separated along the first segments “to change a configuration of said body portion of said sheet material to correspond with a second differently configured platen.”

The “body portion and tip portion have varying configurations defined by second [one of 24, 36, and 46] and third segments [a different one of 24, 36, or 46] defining regions of weakened material.” The “sheet material is adapted to be separated along said second segments to separate a first tip portion, having a first tip configuration, [one of 22, 34, and 44] from a first body portion having a first body configuration [20, 32, 42]” (emphasis added).

The “sheet material is adapted to be selectively separated along said third segments to separate a second tip portion [a different one of 22, 34, and 44], having a second tip configuration different from said first tip configuration, from a second body

portion having a second body configuration different from said first body configuration [20, 32, and 42].”

Thus, in accordance with the teachings of Claim 21, when the working points 22A, 34A, and 44A of alternative tips 22, 34, and 44 respectively become worn, the tips can be separated along segments 24, 36, and 46 to separate the alternative tips 22, 34, 44 from the body portions 20, 32, 42 respectively. The tips are then rotated 180° and reattached to their respective bodies 20, 32, 42 to provide fresh working tips 22B, 34B/34C, 44B.

The alternative tips 22, 34, 44 each have different configurations and sizes, as illustrated separately in Figs. 2-4, respectively, due to the different locations of the segments 24, 36, 46. The size and configuration of each alternative tip corresponds to the size and configuration of the corresponding body portion 20, 32, and 42 and the overall size and configuration of the sheet, such as whether the sheet is large 10A, intermediate 10B, or small 10C.

The Office Actions acknowledge that Martin et al. fails to disclose or suggest an abrasive sheet having a body portion and a tip portion, the sheet adapted to be separated along second segments of weakened material to separate a first tip portion having a first tip configuration from a first body portion and selectively separated along third segments of weakened material to separate a second tip portion having a second tip configuration different from the first tip configuration from a second body portion, as generally set forth in Claim 21. See September 30, 2005 Office Action at 7.

The Simons reference appears to disclose, with reference to Figures 1-3, a square sheet of sand paper 1. The sand paper appears to include divisional or score lines 4 that separate the paper 1 into four equal square portions. The Simons reference fails to

disclose or suggest that the sand paper has a tip portion and second and third segments of weakened material, separation of the sheet along the second segment separates a first tip portion having a first tip configuration from a first body portion having a first body configuration and separation of the sheet along the third segment separates a second tip portion having a second tip configuration that is different from the first tip configuration.

The Pearce reference appears to disclose, with reference to Figure 1, a square abrasive sheet having separable circular areas 2 and 2'. The Pearce reference fails to disclose or alone suggest that the abrasive sheet includes a tip portion and second and third segments of weakened material, separation of the sheet along the second segment separates a first tip portion having a first tip configuration from a first body portion having a first body configuration and separation of the sheet along the third segment separates a second tip portion having a second tip configuration that is different from the first tip configuration.

However, the Office Actions assert that the features of Claim 21 are obvious in light of the combination of Martin et al. along with Pearce and Simons. Specifically, the Office Actions assert that:

Pearce teaches a plurality of segments that define regions of weakened material wherein the sheet is adapted to be separated along two different segments (figure 1 number 2 and 2') for the purpose to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62). Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Martin et al. with a third segment that separates a second tip portion having a second tip configuration that is different from the first tip configuration in order to correspond with a plurality of different sanding machines ....

See March 15, 2006 Office Action at 4 and April 18, 2006 Advisory Action.

Applicants respectfully disagree with the Office Actions. The Simons and Pearce references each fail to disclose or render obvious abrasive sheets having a tip portion at all and particularly fail to disclose or suggest a tip portion with first and second tip configurations provided by separating the tip portion from the body portion along different segments of weakened material.

With respect to the Pearce reference, Pearce does not suggest modifying Martin to have different segments defining regions of weakened material to provide for first and second tip portions having first and second configurations. Pearce merely teaches an alternative hole pattern to correspond to different sanders and is completely silent with respect to different tip configurations. Pearce fails to disclose or suggest a removable tip portion at all.

While the Simons reference is cited in the Section 103 rejection statement of Claims 2-6, 18-19, and 21-23, it does not appear that the Examiner is using Simons to reject independent Claim 21. See 9-30-05 Office Action at 6-10; 3-15-06 Office Action at 3-4; and 4-18-06 Office Action. Regardless, the Simons reference fails to disclose or suggest an abrasive sheet having a body portion and a tip portion, the sheet adapted to be separated along second segments to separate a first tip portion having a first tip configuration from a first body portion and selectively separated along third segments to separate a second tip portion having a second tip configuration different from the first tip configuration from a second body portion.

This Section 103 rejection is improper because it lacks factual basis. *Ex parte David L. Robinson, et al.* The Examiner is impermissibly resorting to speculation, unfound assumptions, and hindsight reconstruction to fill deficiencies in the factual basis of the

rejection. *In re Warner*, 154 U.S.P.Q. at 178. Even if the references could be modified as the Examiner asserts, such modifications are not obvious unless the prior art suggested the desirability of the modification. *In re Mills*, 221 U.S.P.Q. at 1127. The Examiner fails to provide any evidence or explanation as to why and/or how one of ordinary skill in the art would have been motivated to modify the teachings of the Martin et al., the Pearce, and the Simons references to arrive at the claimed invention.

As set forth above, combination of Martin et al., Simons, and Pierce fails to suggest each and every feature of Claim 21. Therefore, Applicants respectfully request reconsideration and withdrawal of this Section 103 rejection of Claim 21, as well as Claims 22 and 23 dependent therefrom.

Claim 3, which is dependent upon Claim 1, and Claim 19, which is dependent upon Claim 17, are each substantially similar to Claim 21. Therefore, Claims 3 and 19 are not obvious in light of the cited art at least for the same reasons set forth above setting forth why Claim 21 is not obvious in light of the prior art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Section 103 rejections of Claim 3 and Claim 19.

3. COMBINATION OF THE MARTIN ET AL., SIMONS AND PEARCE REFERENCES FAILS TO RENDER CLAIMS 4 AND 22 OBVIOUS.

Claims 4 and 22 stand rejected under 35 U.S.C. § 103(a) in light of the combination of the Martin et al., Simons, and Pearce references. Applicants respectfully submit that combination of Martin et al., Simons, and Pearce fails to render obvious either Claim 4 or Claim 22.

Claims 4 and 22 recite, “wherein said first and second tip configurations have

different sizes.” Claim 4 is dependent upon Claims 1 and 3. Claim 22 is dependent upon Claim 21. Claim 21 is substantially similar to the combination of Claims 1 and 3. Therefore, Claims 4 and 22 recite substantially the same subject matter.

The Martin et al. reference discloses a tip configuration of a single size. The Martin et al. reference fails to disclose or alone suggest multiple tip configurations of different sizes.

The Simons reference discloses a square piece of sand paper 1 divided into four equal parts of the same size. The Simons reference fails to disclose or alone suggest multiple tip configurations of different sizes, even if the corners of the sand paper 1 are construed as tips.

The Pearce reference discloses a rectangular abrasive sheet with separable circular areas 2 and 2'. The “patterns, and indeed sizes, of said punch-out areas 2, 2' are arranged to correspond with a plurality of different sanding machines within the size range for that sheet.” Col. 2, lines 59-62. The Pearce reference fails to disclose or alone suggest multiple tip configurations of different sizes, even if the corners of the abrasive sheet are construed as tips.

Thus, combination of the Martin et al., Simons, and Pearce references fails to suggest different tip configurations of different sizes, as set forth in Claims 4 and 22. Further, as set forth above, combination of the Martin et al., Simons, and Pearce references fails to render obvious each element of Claim 21 from which Claim 22 depends, which is substantially similar to Claim 3 from which Claim 4 depends. Therefore, combination of the Martin et al., Simons, and Pearce references fails to render obvious Claim 4 or Claim 22. Applicant respectfully requests reconsideration and



withdrawal of this Section 103 rejection of Claims 4 and 22.

4. COMBINATION OF THE MARTIN ET AL., SIMONS, AND PEARCE REFERENCES FAILS TO RENDER CLAIMS 5 AND 23 OBVIOUS.

Claims 5 and 23 stand rejected under 35 U.S.C. § 103(a) in light of the combination of the Martin et al., Simons, and Pearce references. Applicants respectfully submit that combination of the Martin et al., Simons, and Pearce references fails to render obvious either Claim 5 or Claim 23.

Claims 5 and 23 recite, “wherein said first and second tip configurations have different shapes.” By way of example, it is noted that tip 34 (Fig. 3) is a three-sided tip while alternative tips 22, 44 are four-sided tips, which differ in shape from the three-sided tip 34. Claim 5 is dependent upon Claims 1 and 3. Claim 23 is dependent upon Claim 21. Claim 21 is substantially similar to the combination of Claims 1 and 3. Therefore, Claims 5 and 23 recite substantially the same subject matter.

The Martin et al. reference discloses a tip configuration of a single (four-sided) shape. The Martin et al. reference fails to disclose or alone suggest multiple tip configurations of different shapes.

The Simons reference discloses a square piece of sand paper 1 divided into four equal parts of the same size. The Simons reference fails to disclose or alone suggest multiple tip configurations of different shapes, even if the corners of the sand paper 1 are construed as tips.

The Pearce reference discloses a rectangular abrasive sheet with separable circular areas 2 and 2'. The “patterns, and indeed sizes, of said punch-out areas 2, 2' are

arranged to correspond with a plurality of different sanding machines within the size range for that sheet.” Col. 2, lines 59-62. The Pearce reference fails to disclose or alone suggest multiple tip configurations of different shapes, even if the corners of the abrasive sheet are construed as tips.

Thus, combination of the Martin et al., Simons, and Pearce references fails to suggest different tip configurations of different shapes, as set forth in Claims 5 and 23. Further, as set forth above, combination of Martin et al. and Pearce fails to render obvious each element of Claim 21 from which Claim 23 depends, which is substantially similar to Claim 3 from which Claim 5 depends. Therefore, combination of the Martin et al. and Pearce references fails to render obvious Claim 5 or Claim 23. Applicants respectfully request reconsideration and withdrawal of this Section 103 rejection of Claims 5 and 23.

5. COMBINATION OF THE MARTIN ET AL., SIMONS, AND PEARCE REFERENCES FAILS TO RENDER CLAIM 6 OBVIOUS.

Claim 6 stands rejected under 35 U.S.C. § 103(a) in light of the combination of the Martin et al., Simons, and Pearce references. Applicants respectfully submit that combination of the Martin et al., Simons, and Pearce references fails to render obvious Claim 6.

Claim 6 recites, with reference to Figure 1 for exemplary purposed only as the invention includes numerous embodiments, “[t]he abrasive sheet according to Claim 1, wherein said body portion and said tip portion are separated by a second segment [24, 36, 46] defining regions of weakened material.” The sheet further includes **“at least one replacement tip portion [14A/14B] extending from one of the body portion and the tip portion** and defined by a third segment [16A/16B] defining regions of weakened

material” (emphasis added). The replacement tip portion is “adapted to be separated along said third segment for removing said replacement tip portion from said one of said body portion and said tip portion.”

The Martin et al. reference discloses a single tip at 5. The Martin et al. reference fails to disclose or alone suggest a “replacement tip portion extending from one of the body portion and the tip portion,” as set forth in Claim 6.

The Simons reference appears to disclose a square piece of sand paper that does not have a tip at all. Even if the corner of the sand paper could be construed as a tip, the Simons reference fails to disclose or alone suggest a “replacement tip portion extending from one of the body portion and the tip portion,” as set forth in Claim 6.

The Pearce reference appears to disclose a rectangular abrasive sheet that does not have a tip at all. Even if the corner of the abrasive sheet can be construed as a tip, the Pearce reference fails to disclose or alone suggest a “replacement tip portion extending from one of the body portion and the tip portion,” as set forth in Claim 6.

Therefore, because the Martin et al., Simons, and Pearce references alone fail to disclose or suggest a “replacement tip portion extending from one of the body portion and the tip portion,” as set forth in Claim 6, their combination fails to suggest this feature. Neither the references nor the ordinary skill in the art suggests combination of these references to arrive at Claim 6, thus making this rejection further improper because it is based on impermissible hindsight. Applicants respectfully request reconsideration and withdrawal of this Section 103 rejection of Claim 6.

## VII. CONCLUSION

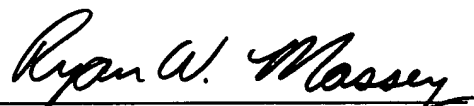
In view of the above presented discussion, Applicants believe that the pending claims are patentably distinguishable over the art cited by the Examiner. Accordingly, Applicants respectfully request that this Board reverse the final rejection of Claims 1-11 and 13-23.

A check in the amount of \$500 for filing a brief in support of this appeal is enclosed herewith. Please charge any deficiency or credit any overpayment pursuant to 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 02-2548.

Respectfully submitted,

Dated: 8-11-06

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Enclosures: Three (3) copies of Appellant's Brief



## **CLAIMS APPENDIX**

### **Claims**

1. (Previously Presented) A universal abrasive sheet for use with alternative sanding or polishing machines having platens with different configurations, comprising:

a sheet material having an abrasive material disposed on a face and having a body portion and a tip portion, said tip portion being separable from said body portion and defining a separate region of said sheet material relative to said body portion, the body portion being provided with a first configuration adapted to be used with a first platen configuration and having first segments defining regions of weakened material, wherein said sheet material is adapted to be separated along said first segments to change a configuration of said body portion of said sheet material to correspond with a second platen configuration having different external dimensions than said first configuration.

2. (Previously Presented) The abrasive sheet according to Claim 1, wherein said sheet material further comprises second segments defining regions of weakened material, wherein said sheet material is adapted to be separated along said second segments to change a configuration of said body portion to correspond with a third differently configured platen.

3. (Previously Presented) The abrasive sheet according to Claim 1, wherein said body portion and tip portion have varying configurations defined by second and third segments defining regions of weakened material, wherein said sheet material is adapted to be separated along said second segments to separate a first tip portion, having a first tip

configuration, from a first body portion having a first body configuration and said sheet material is adapted to be selectively separated along said third segments to separate a second tip portion, having a second tip configuration different from said first tip configuration, from a second body portion having a second body configuration different from said first body configuration.

4. (Original) The abrasive sheet according to Claim 3, wherein said first and second tip configurations have different sizes.

5. (Original) The abrasive sheet according to Claim 3, wherein said first and second tip configurations have different shapes.

6. (Previously Presented) The abrasive sheet according to Claim 1, wherein said body portion and said tip portion are separated by a second segment defining regions of weakened material, said sheet material further including at least one replacement tip portion extending from one of said body portion and said tip portion and defined by a third segment defining regions of weakened material and adapted to be separated along said third segment for removing said replacement tip portion from said one of said body portion and said tip portion.

7. (Previously Presented) The abrasive sheet according to Claim 1, wherein said body portion and said tip portion are separated by a second segment defining regions of weakened material wherein said tip portion can be separated from the body portion,

turned through an angle and re-positioned adjacent the body portion to change a working point of said tip portion.

8. (Original) The abrasive sheet according to Claim 7, wherein said tip portion has at least one side which, when said tip portion is in position adjacent said body portion, complements at least one corresponding side of said body portion to produce an iron-shaped sheet.

9. (Original) The abrasive sheet according to Claim 1, wherein said first configuration of said sheet material is iron-shaped.

10. (Previously Presented) The abrasive sheet according to Claim 1, further comprising attachment means for attaching a second face of said sheet material to a platen.

11. (Original) The abrasive sheet according to Claim 10, wherein said attachment means includes hooks or eyes of a hook-and-loop fastening system.

12. (Cancelled)

13. (Previously Presented) The abrasive sheet according to Claim 1, wherein said body portion and said tip portion are separated by a second segment of weakened

material wherein said tip portion can be separated from the body portion, said tip portion having four sides.

14. (Previously Presented) The abrasive sheet according to Claim 1, wherein said body portion and said tip portion are separated by a second segment defining regions of weakened material wherein said tip portion can be separated from the body portion, said tip portion having three sides.

15. (Original) The abrasive sheet according to Claim 1, wherein said regions of weakened material include a score line drawn on said sheet material.

16. (Original) The abrasive sheet according to Claim 1, wherein said regions of weakened material include perforations.

17. (Previously Presented) A universal abrasive sheet for use with alternative sanding or polishing machines having platens with different configurations, comprising:

a sheet material having an abrasive material disposed on a face and having a body portion and a tip portion, said tip portion being separable from said body portion and defining a separate region of said sheet material relative to said body portion, said body portion being provided with a first configuration adapted to be used with a first platen configuration and having first marking segments, wherein said sheet material is adapted to be separated along said first marking segments to change a configuration of said body



portion of said sheet material to correspond with a second platen configuration having different external dimensions than said first configuration.

18. (Previously Presented) The abrasive sheet according to Claim 17, wherein said sheet material further comprises second marking segments, wherein said sheet material is adapted to be separated along said second marking segments to change a configuration of said body portion to correspond with a third differently configured platen.

19. (Previously Presented) The abrasive sheet according to Claim 17, wherein said body portion and tip portion have varying configurations defined by second and third marking segments, wherein said sheet material is adapted to be separated along said second marking segments to separate a first tip portion, having a first tip configuration, from a first body portion having a first body configuration and said sheet material is adapted to be selectively separated along said third marking segments to separate a second tip portion, having a second tip configuration different from said first tip configuration, from a second body portion having a second body configuration different from said first body configuration.

20. (Original) The abrasive sheet according to Claim 17, wherein said marking segments are drawn on said sheet material.

21. (Previously Presented) A universal abrasive sheet for use with alternative sanding or polishing machines having platens with different configurations, comprising:

a sheet material having an abrasive material disposed on a face and having a body portion and a tip portion, said tip portion being separable from said body portion and defining a separate region of said sheet material relative to said body portion, the body portion being provided with a first configuration adapted to be used with a first platen configuration and having first segments defining regions of weakened material, wherein said sheet material is adapted to be separated along said first segments to change a configuration of said body portion of said sheet material to correspond with a second differently configured platen; and

wherein said body portion and tip portion have varying configurations defined by second and third segments defining regions of weakened material, wherein said sheet material is adapted to be separated along said second segments to separate a first tip portion, having a first tip configuration, from a first body portion having a first body configuration and said sheet material is adapted to be selectively separated along said third segments to separate a second tip portion, having a second tip configuration different from said first tip configuration, from a second body portion having a second body configuration different from said first body configuration.

22. (Previously Presented) The abrasive sheet according to Claim 21, wherein said first and second tip configurations have different sizes.

23. (Previously Presented) The abrasive sheet according to Claim 21, wherein said first and second tip configurations have different shapes.

## **EVIDENCE APPENDIX**

No additional evidence is provided.

## **RELATED PROCEEDINGS APPENDIX**

No related proceedings are currently pending.